

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1264 of 2001

Old F.A.F.O. No. 779 of 1989

1. Executive Engineer, Public Works Department, Temporary Division, Near Laxmi Hotel, Rishikesh, Dehradun. U.P. Lucknow.
2. Government of U.P. through Secretary, Ministry of P.W.D. Lucknow through Collector, Dehradun.

... **Appellants.**

Versus

1. Sri Jai Raj Singh Sindhwal, son of Sri Chatar Singh, Resident of 31-Mani Ram Road, Rishikesh, Dehradun (Claimant)
2. Naresh Mishra, son of Sri Girja Dutt Mishra, Driver, Resident of P.W.D. Guest House, Hardwar Road, Rishikesh District Dehradun.

... **Respondents.**

**Sri. Bhagwan Dass holding brief of learned Standing Counsel for the appellants.
Sri Lokendra Dobhal, Adv., learned counsel for respondents-claimants.**

Date June 28, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short the Act) has been preferred against the judgment and award dated 14-6-1989, passed by the Motor Accidents Claims Tribunal/Additiona District Judge Dehradun, in M.A.C. Petition No. 143 of 1988 Jai Raj Singh Vs. Naresh Mishra and others, whereby compensation of Rs. 69,025/- along with interest @ 6% per annum was awarded under Section 110-A of the Old Act of 1939 in favour of the claimant as mentioned in the impugned order.

Relevant facts necessary for a just decision of the appeal are that the claimant suffered injuries in a vehicular accident involving Government Jeep No. UTD-923, which came from opposite direction having been driven rashly and negligently by its driver and hit the claimant, who was riding on his bicycle near

Laxman Jhula. As a result of the accident, the claimant-injured was hospitalized in the hospital upto 8-3-1988 and right leg became weak and its capacity was reduced and his income @ 925/- has been lost. It was alleged that the injured has become incapacitated to enjoy his livelihood. Accordingly, the claimant claimed compensation of Rs. 2,50,000/- on different counts. The driver of the vehicle, O.P.No.1, filed his written statement and denied the allegations made in the claim petition. It was asserted that no accident took place with the Jeep in question. It was stated that on the relevant time, the driver was driving the jeep at moderate speed and when he reached near Vishal Hotel, he saw three persons coming on one bicycle and they were negligent in pulling the same. In the meantime, a scooterist came from the opposite direction and hit the bicycle and ran away. Due to the impact of the scooter, three persons riding on the cycle fell in front of the Jeep and the driver of the Jeep brought them to the hospital. Thus, there was no negligence on the part of the driver. The O.P.Nos. 2 and 3 filed joint written statement and took the same stand as had been taken by the driver of the Jeep.

The learned Tribunal framed necessary issues in the case, recorded the evidence led by the parties, heard them and after perusing the material on record, took up issue nos. 1 and 2 together for decision, which were framed on the pleas of rival parties on the point of negligence. The learned Tribunal after dealing with the evidence available on record on these issues at page nos. 3 to 8 of the impugned judgment, came to the conclusion that the defence taken by the driver of the offending jeep was entirely false and baseless. The driver of the jeep even did not lead any evidence to substantiate his contention as detailed above. It was accordingly held that the claimant has established on record that the driver of the offending jeep alone was rash and negligent in driving the vehicle, which resulted in injuries to the claimant. On the point of quantum of compensation, the Tribunal found that the injured had incurred expenses of Rs. 5,175/- towards medical treatment but declined to accept that Rs. 2,056/- towards medicines and special diet/fruits were

borne by the injured. The Tribunal did not accept the damage to the cycle to the tune of Rs. 209/- as well as expenses of Rs. 2,000/- for attendant and care. The Tribunal accepted the claim towards loss of salary of Rs. 3,950/- per annum assuming the disability to the extent of 40%. After applying multiplier of 15, assessed loss of income as Rs. 3,590 x 15 = 53,850/-. In addition to it, Tribunal awarded Rs. 10,000/- towards pain and suffering, thereby total compensation of Rs. 69,025/- was awarded in favour of the claimant. It was held that the driver, O.P.No.1, was the employee of appellant-O.P.Nos.2 and 3 and the accident occurred in the course of his employment, therefore, the employers were held liable to pay the compensation along with interest @ 6% per annum. Aggrieved, the State has come up in appeal.

The impugned award has been assailed mainly on the ground that the learned Tribunal committed error in ignoring the defence set up by the opposite parties that in fact the accident took place involving the Jeep in question and the compensation on the ground of 40% disability was not justified. On the other hand, the learned counsel for the respondent submitted that the findings were arrived at by the Tribunal after weighing the evidence led by the parties and the grant of compensation of Rs. 69,025/- was fair and just.

I have heard rival contentions of the parties and perused the evidence on record.

So far as the contention of the appellants that no accident took place involving the Jeep No. UTD-923 is concerned, the contention of the claimant is supported by the testimony of the injured, P.W.1 as well as from the testimony of P.W.2 Jitendra Kumar, who had given ocular account of the accident. He clearly stated that the jeep driver ran away from the hospital. The injured has narrated the entire story in his statement and his testimony is fully corroborated by the statement of P.W.2 on all material points.

The report of the accident was lodged at the police station on 6.1.1988 wherein it was mentioned that the jeep driver was responsible for the accident and after investigation by the police, the driver of the offending jeep was charge-sheeted. Thus, it is prima facie proved that the driver of the jeep was rash and negligent in driving the vehicle. It is true that the appellants have produced five witnesses in defence. I have read over their testimony very closely. None of the witnesses produced by the opposite parties has given a clear cut version of the accident. The testimony of D.W.1, D.W.2 and D.W.3 (Nand Lal, Pawan Kumar and Subhash respectively) neither substantiated the defence version of the accident nor they corroborated each other on material points. Besides them D.W.4 Ram Kumar Sharma and DW.5 Naresh Misra have appeared in the witness box. Their categorical statement is that it was an unknown scooterist, who hit the injured and ran away. Had there been any truth in their testimony, there was nothing to prevent them to have lodged a report with the police stating the said fact. The fact that no report of the accident was lodged from the side of the appellants though admittedly they used their jeep in rescuing the injured to the hospital strikes against their own stand. The driver of the jeep did not even inform his departmental officers regarding the incident in which he made use of the official jeep, but nothing was done. It can safely be said that in case there would have been anything contrary to the allegations made in the claim petition or in the circumstances of the case, if the driver of the jeep had actually seen a scooterist hitting the injured, as a prudent person, he must have lodged the F.I.R. with the police station, when he had taken an injured to the hospital by the jeep driven by him. The learned Tribunal has elaborately thrashed out the entire evidence and has rightly held the jeep driver negligent. I am unable to take a different view.

So far as the disability of 40% assessed by the Tribunal is concerned, the claimant has examined himself as P.W.1 and he deposed on oath that he has become incapacitated from doing

physical work due to accidental injuries and for that reason, he has been removed from his employment. This statement of the claimant has not been seriously challenged in the cross-examination. There is no reason to discard his testimony on this score. The nature of injuries, duration of hospitalization and the treatment etc. undergone by the claimant coupled with his testimony that he has become unfit to do physical work do establish that the disability/deficiency caused to the claimant due to injuries resulted in the loss of job to him, but the learned Tribunal has taken a lenient view to assess the loss of income assuming the disability to the extent of 40%. The appellants could not lead any evidence to prove otherwise to give stand to their contention, therefore, it is not open to the appellants to take a lame stand in appeal. The compensation computed by the Tribunal is just and fair. The findings arrived at by the Tribunal do not warrant any interference in this appeal.

For the reasons and discussion above, the appeal lacks merit and must fail.

The appeal is hereby dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The interim order dated 7.12.1991 passed by the Allahabad High Court is vacated.

(B.S.Verma, J.)

RCP